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Public Prosecutor v Yazid bin Sufaat & Ors

B COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO W-05–141–05 OF 2013
ABU SAMAH, AZAHAR MOHAMED AND MOHD ZAWAWI JJCA
27 JANUARY 2014

C *Criminal Procedure — Charge — Defective charges — Charges of promoting terrorism and abetting act of terrorism — Application to set aside or permanently quash charges — Whether charges defective, confusing and ambiguous — Whether charges mala fides and abuse of process of court — Whether SOSMA meant to deal with actions or threats committed within Malaysia — Whether* D *appeal could proceed in absence of one of the respondents — Whether High Court erred and misconceived charges against respondents*

The three respondents were arrested under s 4 of the Security Offences (Special Measures) Act 2012 ('SOSMA') for committing security offences. SOSMA, E which was enacted pursuant to art 149 of the Federal Constitution, merely regulated the trial of security offences but did not create the said offences. Instead such security offences were punishable under the Penal Code. Thus, the respondents, who were arrested under the SOSMA, were later separately charged for security offences under s 130G(a) of the Penal Code.The first F respondent was charged for promoting a terrorist act between 1 August 2012 and 20 October 2012 at a house situated in Ampang with the intention of advancing an ideological cause with such an act being regarded as a threat to the members of public in Syria, while the second and third respondents were charged for abetting the first respondent in promoting the commission of the G terrorist act at the same place and time. The three respondents applied to set aside and/or permanently quash or stay the charges against them on the grounds that the charges were defective, confusing and ambiguous, that the charges were mala fides, frivolous, vexatious and an abuse of the process court, and finally that the SOSMA was unconstitutional as it was enacted contrary to H arts 149, 5 or 8 of the Federal Constitution. The High Court was of the view that SOSMA was meant to deal with actions or threats committed within Malaysia. It then went on to find that the charges against the respondents were related to acts of terrorism committed outside Malaysia ie in Syria. As such the High Court ruled that proceeding against the respondents by invoking the I provisions of SOSMA would be an abuse of the process of court. On those grounds that High Court set aside or quashed or stayed permanently the charges against respondents and ordered them to be acquitted and discharged. This was an appeal by the public prosecutor against that decision of the High Court. The first and third respondents (the respondents) objected to the

hearing of the appeal on the grounds thatthe second respondent was absent. The respondents submitted that the appeal should be heard in the presence of all the respondents. However, the appellant insisted on proceeding as there was no foreseeable likelihood of securing the attendance of the second respondent, who could not be traced.

Held, allowing the appeal:

(1) There was no rule of law that the appeal against the first and third respondents could not proceed in the absence of the second respondent (see para 12).

(2) The High Court had clearly erred and misconceived the charges against the respondents. An act of terrorism is a transnational phenomenon that has no territorial limits. Thus, for instance, an act of terrorism could be planned or hatched within Malaysia with an intention to execute it outside Malaysia. The intention for SOSMA was, among others, to prevent Malaysia from being used as a terrorist haven. Further, s 2 of the SOSMA made it clear that the procedure laid down in SOSMA applied to the trial of any person charged with committing any security offence under the Code. The High Court judge therefore erred in holding that it would be an abuse of the process of court to invoke the provision of SOSMA for the purpose of trial of the respondents for security offences under s 130G(a) of the Penal Code (see paras 20, 23 & 24).

(3) In the circumstances the orders of the High Court ought to be set aside and the respondents' case should be remitted to the High Court for trial (see para 25).

[Bahasa Malaysia summary

Ketiga-tiga responden telah ditangkap di bawah s 4 Akta Kesalahan Keselamatan (Langkah-Langkah Khas) 2012 ('AKKLK') kerana telah melakukan kesalahan keselamatan. AKKLK, yang telah digubal selaras dengan perkara 149 Perlembagaan Persekutuan, hanya mengawal selia perbicaraan kesalahan keselamatan tetapi tidak membentuk kesalahan-kesalahan tersebut. Sebaliknya kesalahan keselamatan sebegitu boleh dihukum di bawah Kanun Keseksaan. Oleh itu, responden-responden, yang telah ditangkap di bawah AKKLK, kemudian telah dituduh secara berasingan kerana kesalahan keselamatan di bawah s 130G(a) Kanun Keseksaan. Responden pertama telah dituduh kerana menggalakkan tindakan pengganas antara 1 Ogos 2012 dan 20 Oktober 2012 di rumah yang terletak di Ampang dengan niat memajukan punca ideologi dengan apa-apa perbuatan yang dianggap sebagai ancaman kepada orang awam di Syria, manakala responden kedua dan ketiga telah didakwa kerana bersubahat dengan responden pertama dalam menggalakkan perlakuan tindakan pengganas di tempat dan pada masa yang sama. Ketiga-tiga responden memohon untuk mengetepikan dan/atau membatalkan sementara

atau menggantung pertuduhan-pertuduhan itu terhadap mereka atas alasan bahawa pertuduhan-pertuduhan itu adalah defektif, mengelirukan dan tidak jelas, bahawa pertuduhan-pertuduhan itu adalah berniat jahat, remeh, menyusahkan dan satu penyalahgunaan proses mahkamah, dan akhirnya AKKLK adalah tidak berperlembagaan kerana ia telah digubal bertentangan dengan perkara-perkara 149, 5 atau 8 Perlembagaan Persekutuan. Mahkamah Tinggi berpendapat bahawa AKKLK bermaksud untuk mengendalikan tindakan-tindakan atau ugutan-ugutan yang dilakukan dalam Malaysia. Ia kemudian mendapati bahawa pertuduhan-pertuduhan terhadap responden-responden adalah berkaitan dengan tindakan pengganas yang dilakukan di luar Malaysia iaitu di Syria. Oleh itu Mahkamah Tinggi memutuskan bahawa prosiding terhadap responden-responden dengan menggunakan peruntukan-peruntukan AKKLK akan menjadi penyalahgunaan proses mahkamah. Atas alasan tersebut Mahkamah Tinggi mengetepikan atau membatalkan atau menggantung secara kekal pertuduhan-pertuduhan terhadap responden-responden dan memerintahkan mereka dilepas dan dibebaskan. Ini adalah rayuan oleh pendakwa raya terhadap keputusan Mahkamah Tinggi itu. Responden-responden pertama dan ketiga ('responden-responden tersebut') telah membantah terhadap perbicaraan rayuan itu atas alas an bahawa responden kedua tidak hadir. Responden-responden telah berhujah bahawa rayuan itu patut didengar dengan kehadiran kesemua responden. Walau bagaimanapun, perayu mendesak untuk meneruskan kerana tiada kemungkinan yang boleh dijangka untuk menjamin kehadiran responden kedua, yang tidak dapat dikesan.

Diputuskan, membenarkan rayuan:

(1) Tiada rukun undang-undang bahawa rayuan terhadap responden-responden pertama dan ketiga tidak boleh diteruskan dengan ketidakhadiran responden kedua (lihat perenggan 12).

(2) Mahkamah Tinggi dengan jelas terkhilaf dan tersalah tanggap tentang pertuduhan-pertuduhan terhadap responden-responden. Tindakan pengganas adalah fenomena transnasional yang tiada had kawasan. Oleh itu, contohnya, suatu tindakan pengganas boleh dirancang atau dimulakan dalam Malaysia dengan niat untuk melakukannya di luar Malaysia. Niat untuk AKKLK adalah, antara lain, untuk mengelakkan Malaysia digunakan sebagai lokasi pengganas. Selanjutnya, s 2 AKKLK jelas menyatakan bahawa prosedur yang dinyatakan dalam AKKLK terpakai kepada perbicaraan sesiapa yang dituduh melakukan apa-apa kesalahan keselamatan di bawah Kanun tersebut. Hakim Mahkamah Tinggi dengan itu terkhilaf kerana memutuskan bahawa ia adalah penyalahgunaan proses mahkamah untuk menggunakan peruntukan AKKLK bagi tujuan perbicaraan responden-responden kerana kesalahan keselamatan di bawah s 130G(a) Kanun Keseksaan (lihat perenggan 20, 23 & 24).

(3) Dalam keadaan itu perintah-perintah Mahkamah Tinggi patut diketepikan dan kes responden-responden hendaklah dikembalikan kepada Mahkamah Tinggi untuk perbicaraan (lihat perenggan 25).]

Notes

For cases on defective charges, see 5(1) *Mallal's Digest* (4th Ed, 2014 Reissue) paras 1318–1360.

Cases referred to

Dato' Seri Anwar Ibrahim v PP [2010] 6 MLJ 585, FC (refd)
Karpal Singh & Anor v PP [1991] 2 MLJ 544, SC (refd)
People's Union For Civil Liberties & Anor v Union of India 2004 AIR SC 456 (refd)

Legislation referred to

Criminal Procedure Code s 177A
Federal Constitution arts 5, 8, 149
Penal Code ss 4, 109, 130B(2), 130B(5)(b), 130G(a)
Security Offences (Special Measures) Act 2012 ss 2, 4, 12, 13

Abdul Wahab bin Mohamad (Mohamad Hanafiah bin Zakaria, Ishak bin Mohd Yusof, Mohd Farizul bin Hassan Bakri, Choo Hueay Ting & Nadia Mohd Izhar with him) (Deputy Public Prosecutor, Attorney General's Chambers) for the appellant.

Amer Hamzah bin Arshad (Edmund Bon Tai Soon, Wan Hidayati Nadirah bt Wan Ahmad Nasir, Nur Zatulitri bt Md Yusof, Farida bt Mohamad, New Sin Yew and Chan Yen Hui) (Zatul, Hida & Partners) for the first and third respondents.

Abu Samah JCA (delivering judgment of the court):

[1] This is an appeal by the public prosecutor against the decision of the High Court, Shah Alam allowing a joint application by the respondents by way of a notice of motion:

(a) to set aside and/quash or stay permanently the charges against them in exercise of the court's inherent jurisdiction; and

(b) that the respondents be acquitted and discharged of the said charges.

[2] The respondents were arrested on 7 February 2013 under s 4 of the Security Offences (Special Measures) Act 2012 ('SOSMA') and were separately charged before the Magistrate's Court, Ampang for security offences under s 130G(a) of the Penal Code ('the Code'). Their cases were later transferred for trial before the High Court, Shah Alam pursuant to s 177A of the Criminal

Procedure Code. Section 12 of the SOSMA provides that all security offences shall be tried by the High Court.

[3] Yazid bin Sufaat ('the first respondent') was charged for committing a security offence under s 130G(a) of the Penal Code, namely for promoting the commission of a terrorist act with the intention of advancing an ideological cause which is punishable with imprisonment for a term which may extend to thirty years and shall also be liable to fine. The charge against him reads:

> Bahawa kamu antara 1 haribulan Ogos hingga 20 haribulan Oktober 2012 jam antara 8.30 pagi dan 10.30 pagi, di rumah beralamat DL11, Taman Bukit Ampang, Lorong Mutiara 2, Lembah Jaya, Ampang di dalam Daerah Ampang, dalam Negeri Selangor Darul Ehsan, dengan diketahui oleh kamu menggalakkan pelakuan perbuatan keganasan dengan niat untuk memajukan suatu tujuan ideologi, dan perbuatan tersebut boleh semunasabahnya dianggap sebagai diniatkan untuk menggugut orang awam di Syria dan oleh yang demikian, kamu telah melakukan suatu kesalahan di bawah seksyen 130G(a) Kanun Keseksaan (Akta 574) dan boleh dihukum di bawah seksyen yang sama.

[4] Halimah bt Hussein ('the second respondent') was charged for abetting the first respondent in promoting the commission of the said terrorist act, which is an offence under s 130G(a) of the Code read with s 109 of the said Code. The charge against her reads:

> Bahawa kamu antara 1 haribulan Ogos hingga 20 haribulan Oktober 2012 jam antara 8.30 pagi dan 10.30 pagi, di rumah beralamat DL11, Taman Bukit Ampang, Lorong Mutiara 2, Lembah Jaya, Ampang, di dalam Daerah Ampang, dalam Negeri Selangor Darul Ehsan, telah bersubahat dengan Yazid bin Sufaat dengan diketahui oleh kamu menggalakkan pelakuan perbuatan keganasan di mana perbuatan itu dilakukan dengan niat untuk memajukan suatu tujuan ideologi dan perbuatan tersebut boleh semunasabahnya dianggap sebagai diniatkan untuk menggugut orang awam di Syria di mana kesalahan tersebut telah dilakukan atas sebab-sebab persubahat kamu, dan oleh yang demikian, kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 130G(a) Kanun Keseksaan (Akta 574) dibaca bersama seksyen 109 Kanun yang sama.

[5] Muhamad Hilmi bin Hasim ('the third respondent') was similarly charged for abetting the first respondent in promoting the commission of the said terrorist act at the same place and time, which is an offence under s 130G(a) of the Code read with s 109 of the said Code. He was charged as follows:

> Bahawa kamu antara 1 haribulan Ogos hingga 20 haribulan Oktober 2012 jam antara 8.30 pagi dan 10.30 pagi, di rumah beralamat DL11, Taman Bukit Ampang, Lorong Mutiara 2, Lembah Jaya, Ampang, di dalam Daerah Ampang, dalam Negeri Selangor Darul Ehsan, telah bersubahat dengan Yazid bin Sufaat dengan diketahui oleh kamu menggalakkan pelakuan perbuatan keganasan di mana perbuatan itu

dilakukan dengan niat untuk memajukan suatu tujuan ideologi dan perbuatan tersebut boleh semunasabahnya dianggap sebagai diniatkan untuk menggugut orang awam di Syria di mana kesalahan tersebut telah dilakukan atas sebab-sebab persubahat kamu, dan oleh yang demikian, kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 130G(a) Kanun Keseksaan (Akta 574) dibaca bersama seksyen 109 Kanun yang sama.

[6] In this judgment, reference to 'respondents' means the first and third respondents only unless otherwise stated.

[7] We felt it necessary to reproduce the abovesaid charges against the respondents as the High Court's decision in setting aside and/quashing the charges and acquitting them of the said charges was based on the ingredients of the offence as stipulated in the charges.

[8] What is a 'terrorist act'? The term 'terrorist act' is defined in s 130B(2) of the Penal Code:

130(B)2 For the purposes of this Chapter, 'terrorist act' means an act or threat of action within or beyond Malaysia where:

(a) the act or threat falls within subsection (3) and does not fall within subsection (4);

(b) the act is done or the threat is made with the intention of advancing a political, religious or ideological cause; and

(c) the act or threat is intended or may reasonably be regarded as being intended to:

(i) intimidate the public or a section of the public; or

(ii) influence or compel the Government of Malaysia or the Government of any State in Malaysia, any other government, or any international organization to do or refrain from doing any act.

[9] An offence under s 130G(a) of the Code is one of the offences relating to terrorism referred to in Chapter VIA of the Code. Offences under Chapter VIA of the Code are classified as 'security offences' by virtue of s 2 of the SOSMA.

[10] SOSMA is an Act of Parliament enacted pursuant to art 149 of the Federal Constitution ('the Constitution'). The long title to the Act expressly states that it is, 'An Act to provide for special measures relating to security offences for the purpose of maintaining public order and security and for connected matters'. By reason of s 2 of the SOSMA, a person charged for committing a security offence will be tried according to the procedures as laid down in SOSMA. It must be noted that SOSMA merely regulates the trial of security offences. It does not create the said offences. Security offences are

offences under Chapters VI and VIA of the Code and punishable under the said Code.

[11] When the case was called up before us, learned counsel for the first and third respondents objected to the hearing of the appeal on the ground that the second respondent was absent. It was submitted that the appeal should be heard in the presence of all the respondents in order to avoid any possible conflict of decisions by different panels of this court. The appellant insisted on proceeding with the appeal as there was no foreseable likelihood of securing the presence of the second respondent who could not be traced after she was acquitted of the charge against her. Attempts to execute the warrant of arrest against the second respondent were unsuccessful.

[12] After hearing submissions from both parties, we ruled that we could proceed with the appeal against the respondents before us in absence of the second respondent. The appeal in respect of the second respondent could be heard separately after the execution of the warrant of arrest against her. There is no rule of law that the appeal against the first and third respondents cannot proceed in absence of the second respondent. Any further adjournment of the appeal would result in the respondents being held in custody longer than necessary as s 13 of the SOSMA states that no bail shall be granted to a person charged with a security offence.

[13] The application to set aside and/quash or stay the charges permanently against the respondents is based on three grounds. Firstly, the charges against them are defective, confusing, ambiguous and thus do not disclose any offence in law. Secondly, the charges against them are made mala fide, baseless, frivolous, vexatious and an abuse of the process of court. Thirdly SOSMA is unconstitutional and enacted contrary to arts 149, 5 and/or 8 of the Constitution.

[14] Before the High Court, the appellant conceded that the court has inherent power to set aside and/quash or stay the charges against the respondents on the grounds of mala fide or that they are oppressive or an abuse of the process of court (*Dato' Seri Anwar Ibrahim v Public Prosecutor* [2010] 6 MLJ 585, *Karpal Singh & Anor v Public Prosecutor* [1991] 2 MLJ 544). On the first ground, the High Court held and correctly, that it has inherent power to set aside and/quash or stay the charges permanently, 'to prevent an oppressive and mala fide prosecution, abuse of its process and to undo wrong in the course of administration of criminal justice'. As for the third ground, it is clear from the notes of proceedings before the High Court that learned counsel for the respondents did not dispute the constitutionality of SOSMA which was passed pursuant to art 149 of the Constitution. Thus the High Court did not in its grounds of judgment decide on this issue.

[15] The crux of the respondents' contention is that the respondents are charged for promoting an act of terrorism and that act may reasonably be regarded as being intended as a threat to the members of public in Syria and not in Malaysia. It is the contention of the respondents that SOSMA was enacted pursuant to art 149 of the Constitution to deal with action or threat committed within Malaysia by any substantial body of persons from inside or outside Malaysia. Article 149 states:

> 149(1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether *inside* or *outside* the Federation:
>
> (a) to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property; or
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> (b) to excite disaffection against the Yang di-Pertuan Agong or any Government in Federation; or
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> (c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence; or
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> (d) to procure the alteration, otherwise than by lawful means, of anything by law established; or
>
> (e) which is prejudicial to the maintenance or the functioning of any supply or service to the public or any class of the public in the Federation or any part thereof; or
>
> (f) which is prejudicial to public order in, or the security of, the Federation or any part thereof,
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> any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of Article 5, 9, 10 or 13, or would apart from this Article be outside the legislative power of Parliament; and Article 79 shall not apply to a Bill for such an Act or any amendment to such a Bill. (Emphasis added.)

[16] Thus, while art 149 of the Constitution empowers the Legislature to pass an Act of Parliament to deal with action taken or threat by any substantial body of persons from within or outside Malaysia, it does not empower Parliament to legislate or make laws meant to deal with action or threat by any substantial body of persons committed outside Malaysia. As the charges against the respondents specifically refer to terrorist act against members of public in Syria and not in Malaysia the said charges are thus defective, bad in law and do not disclose any offence under s 130G(a) of the Penal Code.

[17] It follows that the special measures provided in SOSMA relating to trial of a security offence under s 130G(a) of the Penal Code are not applicable for trial of the respondents. It is an abuse of process of court to charge the respondents for security offences under s 130G(a) of the Code and apply the

provisions in SOSMA for the trial of the respondents.

[18] The High Court agreed with the submissions of counsel for the respondents that the charges against them were related to acts of terrorism committed outside Malaysia, ie in Syria. It held the view that SOSMA which was enacted pursuant to art 149 of the Constitution, which is meant to deal with action or threat committed within Malaysia by any substantial body of persons from within or outside Malaysia, clearly does not apply to the trial of the respondents for offences relating to acts of terrorism committed outside Malaysia. The High Court ruled that should the prosecution proceed with the said charges against the respondents by invoking the provisions in SOSMA it would be an abuse of the process of court. On those grounds, the High Court set aside and/quashed or stayed permanently the charges against the respondents and ordered them to be acquitted and discharged.

[19] For convenience, we reproduce paras 22(b) and (e) of the judgment of the learned judge which contained His Lordship's reasoning in allowing the application by the respondents:

> (b) Mahkamah ini berpuas hati dan bersetuju dengan hujahan oleh peguam bela bagi pihak Pemohon-Pemohon di mana terdapat merit dalam hujahan yang diutarakan oleh pihak peguam bela mengenai isu berkaitan dengan pertuduhan dan pemakaian SOSMA yang digubal di bawah Perkara 149 Perlembagaan Persekutuan. Adalah dipersetujui bahawa Perkara 149 Perlembagaan Persekutuan hanyalah terpakai bagi maksud ancaman keganasan yang ditujukan kepada keselamatan dalam negeri Malaysia oleh orang atau sebilangan orang yang sama ada berada di dalam mahu pun di luar negara. Oleh sebab pertuduhan-pertuduhan yang dikenakan terhadap Pemohon-Pemohon adalah melibatkan *keganasan yang berlaku di luar negara Malaysia* iaitu di negara Syria, maka pada pandangan Mahkamah ini keadaan tersebut tidak tertakluk di bawah ruang lingkup atau skop pemakaian Perkara 149 Perlembagaan Persekutuan. Oleh itu SOSMA yang digubal di bawah Perkara 149 Perlembagaan Persekutuan pada pandangan Mahkamah ini tidak boleh digunapakai sebagai prosedur dalam perbicaraan bagi membuktikan pertuduhan-pertuduhan yang telah dihadapkan terhadap Pemohon-Pemohon di dalam kes ini. Jika ini dilakukan, ia akan membawa makna bahawa di dalam kes terhadap Pemohon-Pemohon di sini, SOSMA telah digunapakai secara ultra vires Perkara 149 Perlembagaan Persekutuan itu sendiri. Perkara ini tidak sewajarnya berlaku. Mahkamah ini tidak bersetuju dengan hujahan Tuan TPR yang bijaksana bahawa SOSMA mempunyai extra territorial application atau extra territorial jurisdiction, sama seperti KK apabila melibatkan warganegara atau harta benda kepunyaan warganegara Malaysia;
>
> (e) Sekiranya pihak Responden/Pendakwaan meneruskan dengan pendakwaan terhadap Pemohon-Pemohon atas pertuduhan-pertuduhan yang seperti sedia ada dengan menggunapakai prosedur diperuntukkan di

> bawah SOSMA, Mahkamah ini berpandangan bahawa ia adalah satu penyalahgunaan proses Mahkamah dan Mahkamah ini sewajarnya bertindak dengan kuasa yang sedia ada, menghalang pihak Responden/Pendakwaan daripada meneruskan dengan pendakwaan terhadap Pemohon-Pemohon atas pertuduhan-pertuduhan di dalam keadaan kes ini. (Emphasis added.)

(There are no paras (c) and (d) in the grounds of judgment).

[20] In our judgment, the High Court had clearly erred and misconceived the charges against the respondents. The charge against the first respondent is for promoting a terrorist act between 1 August 2012 and 20 October 2012 at a house bearing address DL11, Taman Bukit Ampang, Lorong Mutiara 2, Lembah Jaya Ampang, Selangor with the intention of advancing an ideological cause and that such act can reasonably be regarded as being a threat to the members of public in Syria.

[21] The third respondent is charged with abetting the first respondent for the commission of the said offence at the same place and time, in Malaysia. The charges against the respondents are therefore in respect of acts of terrorism committed within Malaysia. Be that as it may, s 4 of the Penal Code clearly states that any offence under Chapters VI and VIA of the Code include offence done outside Malaysia. Section 130B(5)(b) of the Code states that, 'a reference to the public includes a reference to the public of a country or territory other than Malaysia'.

[22] Learned counsel for the respondents conceded before us that the charges against the respondents refer to the commission of security offences committed within Malaysia. Learned counsel also conceded that the threat to the security of Malaysia may come from within or outside Malaysia.

[23] An act of terrorism is a transnational phenomenon. It has no territorial limits. It transcends national borders. For instance, an act of terrorism may be planned or hatched within Malaysia with an intention to execute it outside Malaysia. The intention of SOSMA is, among others, to prevent Malaysia from being used as a terrorist haven. S Rajendra Babu and GP Mathur JJ in *People's Union For Civil Liberties & Anor v Union of India,* 2004 AIR SC 456 aptly describe acts of terrorism as follows:

> The terrorist threat that we are facing is now on an unprecedented global scale. Terrorism has become a global threat with global effects. It has become a challenge to the whole community of civilised nations. Terrorist activities in one country take on a transnational character, carrying out attacks across one border, receiving funding from private parties or a government across another, and procuring arms from multiple sources. Terrorism in a single country can readily become a threat to

A regional peace and security owing to its spillover effects. It is therefore difficult in the present context to draw a sharp distinction between domestic and international terrorism. Many happenings in the recent past caused the international community to focus on the issue of terrorism with renewed intensity. The Security Council unanimously passed resolutions 1368 (2001) and 1373 (2001); the General Assembly adopted resolutions 56/1 by consensus, and convened a special session. All these resolutions and declarations inter alia call upon member states to take necessary steps to 'prevent and suppress terrorist acts'. India is a party to all these operation among nations. It has thus become our international obligation also to pass necessary laws to fight terrorism.

[24] In our judgment s 2 of the SOSMA makes it clear that the procedure laid down in SOSMA apply to trial of any person charged with committing any security offence under Chapter VIA of the Code. The learned judge therefore erred in holding that it would be an abuse of the process of court to invoke the provisions in SOSMA for the purpose of trial of the respondents for security offences under s 130G(a) or s 130G(a) read with s 109 of the Code.

[25] For the aforesaid reasons, we allowed the appeal by the public prosecutor and set aside all the orders of the High Court. We made a further order that the respondents' case be remitted to the High Court, Shah Alam for the said court to set the dates for trial.

Appeal allowed.

Reported by Kohila Nesan